

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>KYLE MOON, Inmate #B70215,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 04-876-MJR</b>
	)	
<b>BILLY J. GROANING, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM AND ORDER**

**REAGAN, District Judge:**

Plaintiff, a former inmate in the Shawnee Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983.<sup>1</sup> Plaintiff previously was granted leave to proceed *in forma pauperis*, and he has tendered his initial partial filing fee as ordered.

This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
  - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or

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<sup>1</sup>According to the Illinois Department of Corrections website, <http://www.idoc.state.il.us>, accessed August 30, 2005, Plaintiff was released on parole on March 9, 2005. However the Plaintiff has yet to file a change of address to notify the Court of his release; the Court's records still indicate Plaintiff's address as the Shawnee Correctional Center.

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action is legally frivolous and thus subject to summary dismissal.

Plaintiff states that as a result of a disciplinary action, he was denied access to the prison law library for three months. Plaintiff states that he has a number of lawsuits pending in both state and federal court. He claims preventing him from accessing the library and services of the notary violates his right to due process.

#### Law Library Access

To the extent that Plaintiff is claiming he was denied his right of access to the courts by not being able to use the law library, his claim fails. The Seventh Circuit uses a two-part test to decide if prison administrators have violated the right of access to the courts. *Smith v. Shawnee Library Sys.*, 60 F.3d 317 (7<sup>th</sup> Cir. 1995); *Jenkins v. Lane*, 977 F.2d 266, 268 (7<sup>th</sup> Cir. 1992). First, the prisoner must show that prison officials failed “to assist in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” *Jenkins*, 977 F.2d at 268 (quoting *Bounds v. Smith*, 430 U.S. 817, 828 (1977)). Second, he must be able to show “some quantum of detriment caused by the challenged conduct of state officials resulting in the interruption and/or delay of plaintiff’s pending or contemplated litigation.” *Alston v. DeBruyn*, 13 F.3d 1036, 1041 (7<sup>th</sup> Cir. 1994); *Jenkins*, 977 F.2d at 268; *Shango v. Jurich*, 965 F.2d 289, 291 (7<sup>th</sup> Cir. 1992); *Howland v. Kilquist*, 833 F.2d 639, 642-43 (7<sup>th</sup> Cir. 1987); *Hossman v. Sprandlin*, 812 F.2d 1019, 1021 n.2 (7<sup>th</sup> Cir. 1987). That means that a detriment

must exist, a detriment resulting from illegal conduct that affects litigation. It does not mean that any delay is a detriment. *Kincaid v. Vail*, 969 F.2d 594, 603 (7<sup>th</sup> Cir. 1992), *cert. denied*, 113 S.Ct. 1002 (1993). Regardless of the length of an alleged delay, a prisoner must show actual substantial prejudice to specific litigation. *Kincaid*, 969 F.2d at 603. Plaintiff has not stated that he missed any court-imposed deadlines or was prejudiced in any specific pending litigation as a result of Defendants' actions. As such, Plaintiff has not stated a claim on these facts.

### Due Process

To the extent Plaintiff is claiming that he was denied due process in the disciplinary proceeding that led to his loss of library privileges, his claim also fails. In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court set out the minimal procedural protections that must be provided to a prisoner in disciplinary proceedings in which the prisoner loses good time, is confined to a disciplinary segregation, or otherwise subjected to some comparable deprivation of a constitutionally protected liberty interest. *Id.* at 556-572.

*Wolff* required that inmates facing disciplinary charges for misconduct be accorded [1] 24 hours' advance written notice of the charges against them; [2] a right to call witnesses and present documentary evidence in defense, unless doing so would jeopardize institutional safety or correctional goals; [3] the aid of a staff member or inmate in presenting a defense, provided the inmate is illiterate or the issues complex; [4] an impartial tribunal; and [5] a written statement of reasons relied on by the tribunal. 418 U.S. at 563-572.

*Hewitt v. Helms*, 459 U.S. 460, 466 n.3 (1983). The Supreme Court has also held that due process requires that the findings of the disciplinary tribunal must be supported by some evidence in the record. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985); *McPherson v. McBride*, 188 F.3d 784, 786 (7<sup>th</sup> Cir. 1999).

Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of

the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

*Hill*, 459 U.S. at 455-56.

Plaintiff has not alleged that he was denied any of the procedural protections outlined in *Wolff*, or that the conclusion reached by the disciplinary board was not based on evidence in the record. As such, even though Plaintiff has a constitutional right of access to the courts, he has not shown how he was denied due process in the disciplinary proceedings that led to his loss of library privileges.

In summary, Plaintiff's complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** with prejudice. Plaintiff is advised that the dismissal of this action will count as one of his three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

**IT IS SO ORDERED.**

**DATED this 29<sup>th</sup> day of September, 2005.**

s/ Michael J. Reagan  
**MICHAEL J. REAGAN**  
**United States District Judge**